

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Bail Appl..No. 6959 of 2007()

CRIME NO.166/07 OF ATHOLI POLICE STATION

: PETITIONERS/ACCUSED NOS. 2 AND 3

1. BHASKARAN.K.K.,
S/O.KUTTIPARAVAN, AGED 56 YEARS,
KIZHAKKEKAPPIL HOUSE, ATHOLI P.O.,
KOZHIKODE DISTRICT.
2. SHAMEER.K., S/O.HASSAN,
AGED 31 YEARS, KAMMILI HOUSE, ATHOLI VIA,
KOLAKKAD P.O., KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA THROUGH THE SUB
INSPECTOR OF POLICE, ATHOLI POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 22/11/2007 ALONG WITH B.A.NO.6850 OF 2007, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.Nos.6959 & 6850 of 2007

Dated this the 22nd day of November 2007

O R D E R

These petitions are filed by accused 1 to 3 in a crime which was registered initially under Section 308 I.P.C and was altered later to Section 302 I.P.C after the death of the victim. Altogether there are three accused persons. They are named in the F.I.R. The crux of the allegations against the petitioner is that the three accused persons along with the deceased on the fateful night had gone near a pond to play cards. Before they commenced their game, there were disputes between the first accused and the deceased about return of money that was due to the deceased from the first accused. The deceased insisted that the game can be started only after the amount is paid by the first accused. Accused 2 and 3 joined the first accused and the quarrel ensued between the three accused on the one side and the deceased on the other. It is alleged that the deceased was pushed into water by all the three accused. He who did not know swimming fell into the water. The accused persons made no attempt to save him. They went away from the scene.

Fortunately another person had come to the scene. On hearing the commotion, he attempted to save the deceased along with others who also came to the scene. He was rescued. By then, he became unconscious. He was taken to the hospital. He was admitted in the I.C.U as his condition had become very bad. He continued in the hospital from 14/9/2007 to 22/9/2007. He was discharged on 22/9/2007. In the meantime, on the basis of the F.I statement lodged by the brother of the deceased, F.I.R was registered wherein all the three petitioners were shown as accused 1 to 3. While the investigation was in progress, the deceased who was discharged on 22/9/2007 became seriously ill and was readmitted to another hospital on 1/10/2007. He was succumbed to his injuries on 2/10/2007. The postmortem report indicates that the deceased had died on account of injuries and consequent infection which were attributable to the incident that took place on 14/9/2007. The deceased was interrogated and his statement was recorded which is at present to be reckoned as dying declaration on 22/9/2007. The complicity of the petitioners is revealed in such dying declaration/statement of the deceased dated 19/9/2007. The first accused was arrested on

4/10/2007. He continues in custody from that date. Accused 2 and 3 have not been arrested so far. They apprehend imminent arrest.

2. The learned counsel for the first accused submits that the petitioner is absolutely innocent. At any rate, an allegation under Section 302 I.P.C will not be legally sustainable against the said petitioner/first accused. The petitioner who has been remaining in custody from 4/10/2007 may now be enlarged on bail, it is prayed.

3. The learned Public Prosecutor opposes the application but submits that if this court were inclined to grant regular bail to the first accused, it may be subject to appropriate conditions and the police may be given reasonable further time to complete the investigation before the first accused/petitioner is actually released from custody.

4. The learned counsel for accused 2 and 3 submits that they are absolutely innocent. Even accepting the version of the prosecution, the initial dispute was only between the first accused and the deceased. Accused 2 and 3 have no motive whatsoever against the deceased. In these circumstances,

accused 2 and 3 do not deserve to endure the trauma of arrest and incarceration. The petitioners may be granted anticipatory bail, it is prayed.

5. The learned Public Prosecutor opposes the prayer for anticipatory bail of accused 2 and 3. The learned Public Prosecutor submits that initially the dispute was between the first accused and the deceased. In the course of the dispute and quarrel, accused 2 and 3 had joined accused 1 and in the F.I statement as well as in the dying declaration, it is specifically alleged that all the three were parties in the conduct of pushing the deceased into the water. The learned Public Prosecutor also points out the conduct of accused 2 and 3 who did not remain there to save the deceased. The learned Public Prosecutor submits that this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. The petitioners may be directed to resort to the ordinary and normal course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail.

6. I have considered all the relevant inputs. Case diary

has been placed before me. The F.I.R, the dying declaration, postmortem certificate and the statement of the doctor have been read over to me. Having considered all the relevant inputs, I am not persuaded to agree that there are any features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C in favour of accused 2 and 3. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

7. So far as the first accused is concerned, I do note that he is continuing in custody from 4/10/2007. I am satisfied that he can be directed to be released on bail subject to appropriate terms and conditions. The request of the learned Public Prosecutor for some further time to complete the investigation after ensuring the arrest of the co-accused, does appear to me to be reasonable. Appropriate conditions can be imposed.

8. In the result, B.A.No.6850/2007 is allowed. The petitioner/first accused shall be released on bail on the following terms and conditions:

i) The petitioner shall not be released on bail on the strength of this order prior to 06/12/2007. The investigating officer shall, in the meantime, make every endeavour to complete the investigation.

ii) He shall execute a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 12 noon on all Mondays and Fridays, for a period of three months from the date of his release and thereafter as and when directed by the investigating officer in writing to do so.

9. B.A.No.6959/2007 is dismissed subject to the observations made above.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007